

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 669 Resiliency Energy Environment Florida Programs

**SPONSOR(S):** Ways & Means Committee, Fine

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	16 Y, 0 N	Keating	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee	18 Y, 0 N	Roy	Darden
3) Ways & Means Committee	16 Y, 7 N, As CS	LaTorre	Aldridge
4) Commerce Committee			

### SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create Property Assessed Clean Energy (PACE) programs to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill makes several changes to Florida's PACE law, including:

- Using the term "Resiliency Energy Environmental Florida (REEF) program" to refer to the programs used in Florida to provide PACE financing for qualifying improvements;
- Expanding "qualifying improvements" to include wastewater treatment and flood mitigation;
- Authorizing the use of PACE financing for refinancing and for improvements on new construction;
- Modifying eligibility requirements;
- Allowing the total of the mortgage-related debt and the amount of any PACE assessments on a property to reach 100 percent of the property's fair market value;
- Requiring certain disclosures to be made to residential property owners prior to or at the time of signing a PACE financing agreement;
- Requiring certain disclosures to be made verbally, by telephone, prior to issuance of a notice to proceed;
- Establishing a maximum term for PACE assessments;
- Prohibiting the use of certain financing tools through PACE;
- Establishing provisions governing PACE program administrators' enrollment and oversight of contractors that install qualifying improvements on residential real property;
- Prohibiting the use of certain terms in PACE marketing; and
- Requiring an annual report from PACE program administrators.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### *Property Assessed Clean Energy (PACE) Programs*

Generally, Property Assessed Clean Energy (PACE) laws enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.<sup>1</sup> PACE programs are active in 30 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.<sup>2</sup>

##### *PACE in Florida*

In 2010, the Legislature provided specific authority for local governments to create PACE programs.<sup>3</sup> The law<sup>4</sup> provides supplemental authority to local governments<sup>5</sup> concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.<sup>6</sup> "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.<sup>7</sup>

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.<sup>8</sup> The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement ... is not enforceable."<sup>9</sup> However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,<sup>10</sup> so if the homeowner defaults on their mortgage or goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

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<sup>1</sup> For more information, see <http://www.pacenation.org> and <http://floridapace.gov/> (last visited April 5, 2023).

<sup>2</sup> California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. See PACE Nation, *PACE Programs* <https://www.pacenation.org/pace-programs/> (last visited April 5, 2023).

<sup>3</sup> Ch. 2010-139, Laws of Fla.

<sup>4</sup> S. 163.08, F.S.

<sup>5</sup> Section 163.08(2)(a), F.S., defines the term "local government" to mean a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."

<sup>6</sup> S. 163.08(4), F.S.

<sup>7</sup> S. 163.08(2)(b), F.S.

<sup>8</sup> S. 163.08(13), F.S.

<sup>9</sup> S. 163.08(15), F.S.

<sup>10</sup> See ss. 125.01(1)(r), 170.01 and 170.09, F.S.

In 2012, the Legislature expanded the definition of “local government” to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act<sup>11</sup> to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.<sup>12</sup>

Before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments on the property are paid and have not been delinquent for the preceding 3 years (or the property owner’s period of ownership, if less than 3 years);
- There are no involuntary liens on the property, including, but not limited to, construction liens;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years (or the property owner’s period of ownership, if less than 3 years); and
- The property owner is current on all mortgage debt on the property.<sup>13</sup>

The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.<sup>14</sup> Consideration of the property owner’s ability to repay the assessment is not required.

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers. Generally, PACE providers are private companies that administer the local government’s PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.<sup>15</sup> PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.<sup>16</sup>

For example, Broward County authorizes the following PACE providers:<sup>17</sup>

- Counterpointe Energy Solutions administers a commercial PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the “Dividend” Program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program for the Florida PACE Funding Agency District.
- Greenworks Lending administers a commercial PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program for the Florida PACE Funding Agency District.
- Rahill administers a commercial PACE program for the Florida Resiliency and Energy District.

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<sup>11</sup> S. 163.01(7), F.S.

<sup>12</sup> Ch. 2012-117, Laws of Fla.

<sup>13</sup> S. 163.08(9), F.S.

<sup>14</sup> S. 163.08(12)(a), F.S.

<sup>15</sup> See, e.g., Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13,

[https://flauditor.gov/pages/specialdistricts\\_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20\(pace\)%20district.pdf](https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf) (last visited April 5, 2023).

<sup>16</sup> See, e.g., Sarasota County, PACE, <https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace> (last visited April 5, 2023).

<sup>17</sup> Broward County, *Property Assessed Clean Energy (PACE)*

[https://www.broward.org/Sustainability/Documents/PACEProviderList\\_2022.pdf](https://www.broward.org/Sustainability/Documents/PACEProviderList_2022.pdf) (last visited April 5, 2023).

- Renew Financial administers PACE programs under the “RenewPACE” Program (residential and commercial) for the Florida Green Finance Authority.
- Structured Finance Associates administers a commercial PACE program for the Florida Resiliency and Energy District.
- Twain Financial Partners administers a commercial PACE program for the Florida Renewable Energy District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

PACE financing interest rates vary but are typically higher than traditional financing.<sup>18</sup> Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner.<sup>19</sup>

### *Federal Housing Finance Agency and Super-Priority Liens*

In 2010, and again in 2014,<sup>20</sup> the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.<sup>21</sup>

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.<sup>22</sup>

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.<sup>23</sup>

<sup>18</sup> The Balance, *How PACE Loans Work*, <https://www.thebalancemoney.com/pace-loans-financing-for-upgrades-4124071> (last visited April 5, 2023).

<sup>19</sup> See PACE Broward, *Frequently Asked Questions*,

[https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet\\_Update6\\_09272021.pdf](https://www.broward.org/Climate/Documents/PACE%20Broward%20FAQ%20Sheet_Update6_09272021.pdf) (last visited April 5, 2023).

<sup>20</sup> Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010),

<http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx> (last visited April 5,

2023). See also Federal Housing Finance Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens*

(December 22, 2014) (“FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac’s policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it”)

<http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx> (last visited April 5, 2023).

<sup>21</sup> “Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner’s acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender.” Prentiss Cox, *Keeping PACE? The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), [https://scholarship.law.umn.edu/faculty\\_articles/549](https://scholarship.law.umn.edu/faculty_articles/549) (last visited April 5, 2023).

<sup>22</sup> FHFA *Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

<sup>23</sup> FHFA *Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 20.

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.<sup>24</sup>

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.<sup>25</sup> For example, in 2013, California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.<sup>26</sup>

### *Consumer Protection*

Consumer issues have surrounded the PACE programs from their inception.<sup>27</sup> These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.<sup>28</sup> An administrator of residential PACE programs in California and Florida recently settled with the Federal Trade Commission and California to address complaints that the administrator recruited and authorized contractors, without adequate training or oversight, to sell its financing, leading to many consumers being deceived during the sales process and being unfairly subjected to liens on their homes without their express, informed consent.<sup>29</sup>

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.<sup>30</sup>

The United States Department of Energy maintains “best practice guidelines” for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;

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<sup>24</sup> FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).

<sup>25</sup> Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.

<sup>26</sup> NCSL, *PACE Financing* <https://www.ncsl.org/research/energy/pace-financing.aspx> (last visited April 5, 2023).

<sup>27</sup> “PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure.” National Consumer Law Center, *Advocates Applaud CFPB's Intention to Deal with PACE Loan Program Abuses* (Mar. 4, 2019), <https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html> (last visited April 5, 2023).

<sup>28</sup> FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).

<sup>29</sup> Federal Trade Commission, *FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent*, <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens> (last visited April 5, 2023).

<sup>30</sup> FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). See also Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, *Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing*, 84 FR 8479 (Mar. 8, 2019).

- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.<sup>31</sup>

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.<sup>32</sup>

### *Wastewater Treatment Improvements*

The Florida Department of Health provides “Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as septic systems, are a safe and effective means of wastewater disposal for 30 percent of Florida’s population. The OSTDS program ensures that the OSTDS is properly designed, constructed, and maintained through permitting and inspection and contributes to safe ground water, which provides 90 percent of Florida’s drinking water.”<sup>33</sup>

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.<sup>34</sup> These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of \$15,000 to \$20,000.<sup>35</sup>

## **Effect of the Bill**

The bill makes several changes to Florida’s PACE law.

### *Definitions*

The bill creates and uses the term “Resiliency Energy Environmental Florida (REEF) program” to refer to the programs used in Florida to provide PACE financing for qualifying improvements and creates definitions for additional terms related to PACE financing, as follows:

- *Resiliency Energy Environment Florida (REEF) program* means a program established by a local government, alone or in partnership with other local governments or a program

<sup>31</sup> Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), <https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf> (last visited April 5, 2023).

<sup>32</sup> See, e.g., Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements [https://discover.pbcgov.org/resilience/PDF/PACE\\_ORDINANCE\\_2017-012%20-%20ADA%20Compliant.pdf](https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf) (last visited April 5, 2023).

<sup>33</sup> Onsite Sewage, Florida Department of Health, last modified Oct 20, 2020, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last accessed April 14, 2023)

<sup>34</sup> Benita Goldstein, “Failing septic tanks damaging state’s environment; will cost billions of dollars to replace,” Apr. 22, 2019, South Florida Sun Sentinel, available at <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-septic-tanks20190422-story.html> (last accessed April 14, 2023).

<sup>35</sup> Terri Lowery, “Cities, Counties Need Plan to Switch Septic to Sewer,” May 14, 2016, Florida Today, available at <https://www.floridatoday.com/story/opinion/columnists/guest-columns/2016/05/14/cities-counties-need-plan-switch-septicsewer/84295648/> (last accessed April 14, 2023).

administrator, to finance qualifying improvements on nonresidential real property or residential real property.

- *Assessment financing agreement* means the financing agreement, under a REEF program, between a local government and a property owner for the acquisition or installation of qualifying improvements.
- *Non-ad valorem assessment* or *assessment* has the same meaning as the term "non-ad valorem assessment" as defined in s. 197.3632(1), F.S.
- *Residential real property* means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.
- *Nonresidential real property* means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. The term includes multifamily residential property composed of five or more dwelling units.
- *Program administrator* means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government may contract to administer a REEF program.

The bill amends the definition of "qualifying improvements" to expand the types of projects a local government's REEF program may finance. Significantly, the bill adds the following two new categories of qualifying improvements to the program:

- Wastewater improvements; and
- Flood and water damage mitigation and resiliency improvements.

The "wastewater improvement" category includes the following:

- The removal, replacement or improvement of an onsite sewage treatment and disposal system with a secondary or advanced onsite sewage treatment and disposable system or technology;
- The replacement or conversion of an onsite sewage and disposal system to a central sewerage system or distributed sewerage system; and
- Any removal, repair, or modification made to an onsite sewage treatment and disposal system.

The "flood and water damage mitigation and resiliency improvement" category includes projects and installations for the following:

- The raising of a structure above the base flood elevation to reduce flood damage; Building or repairing a flood diversion apparatus;
- A flood diversion apparatus or sea wall improvement, which includes seawall repairs and seawall replacements;
- Flood damage-resistant building materials;
- Electrical, mechanical, plumbing, or other system improvements that reduce flood damage; or
- Other improvements that qualify for reductions in flood insurance premiums.

### *Uses for PACE Financing*

The bill expands the authorized uses of PACE financing. First, the bill specifies that PACE financing may be used as *refinance* tool. Second, the bill authorizes PACE financing to be used for all types of qualifying improvements on residential and nonresidential real property *under new construction*.

### *Eligibility Requirements for PACE Financing*

The bill softens existing eligibility requirements as follows:

- Delinquency in payment of property taxes or other assessments on a property during the preceding 3 years do not preclude the use of PACE financing if the delinquency was not longer than 30 days.
- Involuntary liens on a property do not preclude the use of PACE financing if not greater than \$1,000.
- Recorded notices of default or other evidence of property-based debt delinquency during the preceding 3 years do not preclude use of PACE financing if released during that time.

The bill requires that the local government or program administrator, before entering into a PACE financing agreement, must:

- Ask the property owner whether any other PACE assessments have already been recorded, or funded but not yet recorded, on the property.<sup>36</sup>
- For a residential property, reasonably determine that the property is not subject to an existing home equity conversion mortgage or reverse mortgage product.
- For a residential property, reasonably determine that the property was not gifted to the homeowner for free by a nonprofit entity “as may be disclosed by the property owner.”

### *Ability to Repay*

The bill requires that, prior to final approval of a PACE assessment on residential property, the program administrator must reasonably determine that the property owner has the ability to pay the estimated annual assessment. To make this determination, the program administrator must determine that the total estimated annual payment amount for all PACE assessments on the property does not exceed 10 percent of the property owner’s annual household income. The bill provides that income may be confirmed using information from reputable third parties that provide reasonably reliable evidence of the property owner’s household income and may not be confirmed solely by a property owner’s statement.

### *Debt-to-Value Limitations on PACE Assessments*

Under current law, the total amount of any PACE assessment may not exceed 20 percent of a property’s just value, without consent of the holder or servicer of a mortgage secured by a property. The bill replaces the “just value” standard in current law<sup>37</sup> with a “fair market value” standard.

The bill provides that, for residential property, the combined mortgage-related debt and the total amount of any PACE assessments on the property may not exceed 100 percent of the property’s fair market value, as determined by reputable third parties. However, this limit can be exceeded if a property owner fails to disclose whether other PACE assessments have already been recorded, or funded but not yet recorded, on the property.

### *Disclosures*

The bill requires that the program administrator, before or at the same time that a residential property owner signs a PACE financing agreement, must provide a financing estimate and disclosure that includes the following:

- The total amount estimated to be funded, including the cost of the qualifying improvements, program fees, and capitalized interest, if any.
- The estimated annual assessment.
- The term of the assessment.
- The interest charged and estimated annual percentage rate.
- A description of the qualifying improvement.
- A disclosure that if the property owner sells or refinances the property, the property owner, as a condition of the sale or the refinance, may be required by a mortgage lender to pay off the full amount owed under each assessment financing agreement.
- A disclosure that the assessment will be collected along with the property owner's property taxes and will result in a lien on the property from the date the financing agreement is recorded.
- A disclosure that failure to pay the assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the property.

The bill provides that the program administrator, before a notice to proceed is issued on residential real property, must conduct an oral, recorded telephone call with the property owner or an authorized

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<sup>36</sup> The bill provides that failure of a property owner to disclose this information does not invalidate a PACE financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements causes the property’s debt-to-value ratio to exceed the limit of 100 percent specified in the bill.

<sup>37</sup> Under current law, “just value” is the value of the property as determined by the county property appraiser.

representative. The program administrator must ask the property owner if he or she would like to communicate primarily in a language other than English. On the telephone call, the program administrator must confirm all of the following with the property owner:

- That at least one property owner has access to a copy of the PACE financing agreement and financing estimates and disclosures.
- The qualifying improvements being financed.
- The total estimated annual costs that the property owner will have to pay under the financing agreement, including applicable fees.
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.
- The estimated due date for the property owner's first property tax payment that includes the assessment.
- The term of the financing agreement.
- That payments for the financing agreement will cause the property owner's annual property tax bill to increase, and that payments will be made through an additional annual assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the property owner's mortgage escrow account.
- That the property owner has disclosed whether the property has received, or the owner is seeking, additional assessments funded under this section and that the owner has disclosed all other PACE assessments which are or are about to be placed on the property.
- That the property will be subject to a lien during the term of the financing agreement and that the obligations under the agreement may be required to be paid in full before the residential real property owner sells or refinances the property.
- That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.
- That the program administrator does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the financing agreement.

A program administrator may not leave a voicemail to satisfy this requirement.

### *Terms of PACE Financing Agreements*

The bill limits the term of a PACE financing agreement to the lesser of: (1) 30 years; or (2) the greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

The bill prohibits a PACE financing agreement from including a negative amortization schedule,<sup>38</sup> a balloon payment, or prepayment fees other than nominal administrative costs.

### *PACE Contractors*

The bill establishes terms for the enrollment and oversight of contractors by PACE program administrators. These provisions apply only with respect to PACE financing for residential real property.

Before enrolling a contractor to install qualifying improvements, the bill provides that program administrators must make a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage. Program administrators must also obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

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<sup>38</sup> The bill provides that capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

The bill further provides that program administrators must maintain a process to enroll new contractors which includes reasonable review of the following for each contractor: relevant work or project history; financial and reputational background checks; a criminal background check; and status on the Better Business Bureau online platform or another online platform that tracks contractor reviews.

The bill also provides that program administrators must maintain a process for monitoring enrolled contractors with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. Program administrators must maintain a policy for determining the conditions on which a contractor may reinstated to the program.

The bill authorizes program administrators to pay or reimburse contractors for any expense allowable under applicable state law and not otherwise prohibited under Florida's PACE law including, but not limited to, marketing, training, and promotions.

Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must first confirm that the applicable work or service has been completed through any of the following: a written certification from the property owner; a recorded telephone call with the property owner; a review of geotagged and time-stamped photographs; a review of a final permit; or a site inspection through third-party means.

The bill prohibits a program administrator from disclosing to a contractor or to a third party engaged in soliciting a PACE financing agreement the maximum financing amount for which a residential property owner is eligible. Program administrators are also prohibited from providing a contractor with any payment, fee, or kickback in exchange for referring PACE financing business relating to a specific PACE financing agreement on residential property.

The bill prohibits PACE contractors from presenting a higher price for a qualifying improvement financed by a PACE assessment than the contractor would otherwise reasonably present if the qualifying improvement was not being financed through a PACE assessment.

### *PACE Marketing*

The bill prohibits program administrators from representing that PACE financing is a government assistance program, that qualifying improvements are free or that PACE financing is a free program, or that the financing of a qualifying improvement under PACE does not require the property owner to repay the financial obligation. Program administrators are also prohibited from making any representation as to the tax deductibility of a PACE assessment.

### *Annual Report*

The bill requires each program administrator to provide, at a reasonable time following the end of the prior calendar year, an annual report to the dependent special district as defined in s. 189.012 or a separate legal entity created pursuant to s. 163.01(7) which it has contracted with to administer a PACE program and shall include information and data related to the following:

- The total number of property owner complaints received which are associated with project funding in the report year.
- Of the total number of property owner complaints received which are associated with project funding in the report year:
  - The number and percentage of complaints that relate to PACE financing.
  - The number and percentage of complaints that relate to a contractor or the workmanship of a contractor and are not related to PACE financing.
  - The number and percentage of complaints that relate to both a contractor and the PACE financing.
  - The number and percentage of complaints received which were resolved and the number and percentage of complaints received which were not resolved.

- The percentage of property owner complaints received expressed as a total of all projects funded in the report year.

### *Other Provisions*

The bill provides that a residential real property owner may cancel a PACE financing agreement within 3 business days after signing the agreement without any financial penalty from the program administrator for doing so.

The bill provides that a notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. The lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the PACE financing agreement.

The bill provides that program administrators must use appropriate methodologies or technologies to identify and verify the identity of the residential real property owner who executes an assessment financing agreement.

The bill requires program administrators to develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints as soon as reasonably practicable.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

**Section 2.** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.

2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.

2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that a local government or program administrator does not already impose measures similar to those in the bill, the bill may impose costs on PACE program administrators.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

The bill does not require or authorize rulemaking.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### *Ability to Repay*

To determine a property owner's ability to repay a PACE assessment, the bill requires a determination that the total annual payment for all PACE assessments on a property does not exceed 10 percent of the property owner's household income. This determination does not account for the property owner's household expenses and other debt obligations, thus may not provide an accurate evaluation of a property owner's ability to repay a PACE assessment while meeting those expenses and debt obligations.

### *Debt-to-Value*

The bill allows a residential property owner, through the addition of PACE assessments to existing mortgage debt, to obligate the entire value of its property to secure debt, putting the property owner at greater risk of being "upside down," which would make refinancing or selling the property more difficult.

### *Disclosures*

Under the bill, certain material disclosures may not occur until the time a PACE financing agreement is being signed. The bill does not specify the form (e.g., written, oral, electronic) in which disclosures required prior to or at the time of signing a PACE financing agreement must be provided and does not require acknowledgment of these disclosures.

Certain disclosures are required to be made only verbally, by phone, after a PACE financing agreement may have been signed. Some of these disclosures may be material to some property owners but may not come before the end of the 3-day cancellation period provided in the bill, such as the following:

- That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.
- That the program administrator does not provide tax advice, and the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the PACE financing agreement.
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.

### *PACE Contractors and Marketing*

The bill requires PACE program administrators to maintain a process for monitoring enrolled contractors with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. For this provision to be effective, local governments and/or PACE program administrators will need to adopt sufficient program policies and behavioral standards for contractors.

The bill imposes certain marketing prohibitions on PACE program administrators, but these prohibitions do not apply to contractors or other third-party marketers.

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 12, 2023, the Ways & Means Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute differs from HB 669 by expanding "qualifying improvements" to include wastewater treatment and flood mitigation.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.